

(2018) 06 CAL CK 0143

Calcutta High Court

Case No: C. O. No. 676 of 2018

Hashen Seikh And Others

APPELLANT

Vs

Asura Bibi And Others

RESPONDENT

Date of Decision: June 14, 2018

Acts Referred:

- Code of Civil Procedure, 1908 - Section 151, Order 39 Rule 2A, Order 39 Rule 1, Order 39 Rule 2

Hon'ble Judges: SABYASACHI BHATTACHARYYA, J

Bench: Single Bench

Advocate: Biswarup Biswas, Tapan Chakraborty, Anima Chakraborty

Final Decision: Dismissed

Judgement

The defendants in a suit for permanent injunction in respect of an immovable property have preferred the instant revisional application against an order, whereby an application filed by the plaintiffs/opposite party nos. 1 and 2 under Section 151 of the Code of Civil Procedure, for restoration of possession by police help, has been allowed. The grievance of the plaintiffs/opposite party nos. 1 and 2 in the said application under Section 151 of the Code was that the present petitioners, in violation of a previous injunction order passed by the trial court, had dispossessed the opposite party nos. 1 and 2 from the suit property.

In such premise, the opposite party nos. 1 and 2 prayed for police help to get restoration of possession in order to undo the mischief committed by the defendants/petitioners. The trial court, upon consideration of the submission of both sides, allowed such application on contest. Learned counsel for the

petitioners submits that the impugned order suffers from jurisdictional error for the following reasons:

First, in view of availability of an alternative remedy under Order XXXIX Rule 2A of the Code of Civil Procedure, no application for police help under

Section 151 of the Code could lie. Second, in view of availability of Order XXXIX Rules 1 and 2 of the Code, the court had no jurisdiction to invoke its

inherent power under Section 151 of the Code. The third question raised by learned counsel is that the plaintiffs/opposite party nos. 1 and 2 were never

in possession of the suit property and, as such, there was no dispossession by the petitioners at all.

In support of his contentions, learned counsel for the petitioners cites a judgment reported at 2016 (1) CHN 500 (Sri Satyabrata Mukherjee & Ors.

Versus Sri Manoranjan Baidya & Ors.), where it was held that since four miscellaneous cases under Order XXXIX Rule 2A of the Code were

pending, where there was scope of leading evidence to establish violation of injunction, the application filed by the petitioners therein under Section 151

of the Code was not maintainable. However, it was made clear by the coordinate Bench in the said judgment that nothing would prevent the

petitioners therein to take out an application under Section 151 of the Code, if situation so demands, after the said miscellaneous cases were disposed

of.

A Division Bench judgment of this Court, reported at AIR 1986 Calcutta 220 (Sujit Pal v. Prabir Kumar Sen and others), cited before the said co-

ordinate Bench, was distinguished on the premise that in the case before the said Division Bench, it had been decided that the court had inherent

power to grant temporary mandatory injunction for restoration of possession of a person, who was dispossessed despite an order of interim injunction,

but in the case before the Honâ€™ble Single Judge, police help was sought to implement an injunction order. Learned counsel for the petitioners also

relied on a judgment reported at 2011 (11) SCC 275 (K. K. Velusamy versus N. Palanisamy), where the situations for invoking Section 151 of the

Code were laid down.

Learned counsel for the opposite party nos. 1 and 2 controverted the arguments advanced on behalf of the petitioners on all counts. He cited a

Division Bench judgment of this Court reported at AIR 1986 Calcutta 220, where it was held that the court could grant temporary mandatory injunction under Section 151 of the Code by directing the police to restore possession where the dispossessed person had been forcibly ousted in violation of an interim injunction. It was, further, laid down by the Division Bench that no technicality could prevent the court from doing justice in exercise of its inherent power. It was also held that the procedure laid down in Order XXXIX Rule 2A of the Code was incapable of granting an immediate relief to a party who had been forcibly dispossessed in violation of an order of injunction and in such a case the court was not powerless to grant relief to the aggrieved party in exercise of its inherent power.

After hearing both sides and going through the materials on record, it is evident that the injunction granted by the trial court restraining the present petitioners from disturbing the possession of the opposite party nos. 1 and 2 is still subsisting. Upon query, learned counsel for the petitioners submitted that, although the petitioners had preferred an appeal against such injunction order, the appeal had met failure. As such, the third argument made by the petitioners, as to the opposite party nos. 1 and 2 being never in possession of the suit property, cannot stand a moment's consideration. In view of the injunction order being crystallized and attained finality, it could not now be argued by the petitioners that the opposite party nos. 1 and 2 were not in possession at the relevant juncture.

As to the argument that in view of availability of Order XXXIX Rule 2A of the Code, no application under Section 151 of the Code lay for restoration of possession, the said question was settled by the Division Bench of this Court in AIR 1986 Calcutta 220, as referred to above. Taking a cue from the said judgment, since Order XXXIX Rule 2A of the Code is incapable of granting an immediate relief to a forcibly dispossessed party, when such dispossession was in violation of an injunction order, the opposite party nos. 1 and 2 could very well invoke the inherent powers of the court to seek the relief for restoration to undo the wrong committed by the present petitioners.

As such, there was no bar in the plaintiffs/opposite party nos. 1 and 2 to resort to the inherent powers of the court for restoration of possession taken

in violation of injunction, despite the availability of Order XXXIX Rule 2A of the Code, since the two remedies operated in different fields. Regarding the other argument of the petitioners, inasmuch as no application under Section 151 of the Code was maintainable due to availability of Order XXXIX Rules 1 and 2 of the Code, the said question was also laid at rest, upon being negated, by the Division Bench in the judgement reported at AIR 1986 Calcutta 220.

As far as the judgment of a co-ordinate Bench reported at 2016 (1) CHN 500, cited by the petitioners, is concerned, it is clear that factual scenario in such case was entirely different from the present one. In fact, there were four existing cases under Order XXXIX Rule 2A of the Code there and, in the opinion of the Honâ€™ble Single Judge, the evidence which would be led in such cases would govern the fate of the application for police help under Section 151 of the Code.

As such, the said Single Judge also granted liberty to the petitioners to take out an application under Section 151 of the Code, if situation so demanded, after disposal of the miscellaneous cases. Moreover, the said Single Judge considered the Division Bench judgment reported at AIR 1986 Calcutta 220 and, in fact, distinguished the said judgment with the case in hand before the Single Judge, on the premise that the Division Bench judgment dealt with restoration of possession to a person dispossessed, despite an order of injunction, by way of granting temporary mandatory injunction under the inherent power of the court, whereas the Single Judge was dealing with a prayer for implementation of the order of injunction by police help. If the facts of the present case are considered, those are identical with the factual premise before the Division Bench in AIR 1986 Calcutta 220, rather than with the facts of the Single Judgeâ€™s decision in 2016 (1) CHN 500.

As such, if at all, the judgement reported at 2016 (1) CHN 500 was â€œsquarely inapplicableâ€ to the instant case. Regarding the judgement of the Supreme Court cited by the petitioners, undoubtedly certain situations, where inherent power of the court could be invoked, were laid down in the said judgment. However, such situations do not restrict the court to only those, thereby curbing the entire spirit of the inherent power of the court

underlying Section 151 of the Code. Section 151 of the Code enables the court to exercise its inherent power, which is the substratum of the source of power available to the court. Such provision is residuary in nature and cannot be restricted to certain specific facts and situations.

In fact, the judgment passed by the Supreme Court in the cited decision was in the light of the facts therein, such facts being that Section 151 of the Code was used for reopening evidence on recalling witnesses. In the said premise, the Supreme Court held that Section 151 of the Code might not have been properly used. As such, the judgment of the Supreme Court has no direct bearing upon the instant case and is also not applicable. In the present case, in view of the materials available, the trial court was perfectly justified in granting police help for restoring possession to the plaintiffs/opposite party nos.

1 and 2, who were dispossessed unlawfully by the recalcitrant petitioners. In fact, this Court is bent upon imposing costs on the petitioners for being the cheek to blatantly violate an injunction order of the trial court and then to approach this court against the order of police help on certain technical aspects alone. Accordingly, C. O. No. 676 of 2018 is dismissed on contest with costs assessed at Rs.10,000/- (Rupees ten thousand) only, payable by the petitioners to the opposite party nos. 1 and 2 within a week from date. In the event of non- payment of such costs, the opposite party nos. 1 and 2 will be at liberty to have the order of costs executed in due course of law. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.